

Thomas & Solomon LLP
THE EMPLOYMENT ATTORNEYS

August 14, 2017

VIA ECF

Honorable Michael A. Telesca
United States District Court
Western District of New York
100 State Street
Rochester, New York 14614

Re: Lusk, et al. v. Serve U Brands, Inc., et al.
Civil Action No. 17-6451

Dear Judge Telesca:

We write in response to defendants' August 11, 2017 correspondence regarding plaintiffs' motion for conditional certification and notice pursuant to the Fair Labor Standards Act ("motion for conditional certification"). *See* Docket No. 21. While we apologize for sending another letter on these issues, we feel compelled to correct the misstatements in defendants' letter.

First, plaintiffs served both the motion for conditional certification and the briefing schedule on that motion with the summons and complaint. There is no basis for defendants to complain about not having notice of the motion. In fact, defense counsel was aware of the pending motion and briefing schedule when he called our office on July 27.

Second, in his call to our office, defense counsel did not discuss any "deficiencies" with the complaint but instead sought an extension to respond to the motion. Plaintiffs consented to the extension provided there was tolling given the statute of limitations issues. In fact, plaintiffs remain willing to consent to a reasonable extension with tolling.

Third, defendants make reference to a pending "letter application" before the Court. In that "application" defendants seek a conference to discuss an extension. To date, the Court has not granted that request. Further, it is clear that defendants' letter did not actually seek an extension. Nor could the letter have been considered a motion for an extension as it does not comply with Local Rule 7. Thus, defendants have no pending application, or proper motion, for an extension.

Fourth, defendants suggest that they seek an "orderly" schedule for the matter. Apparently defendants believe they can unilaterally determine that briefing schedules set by the Court are not "orderly," submit a letter seeking something different and otherwise ignore the Court's order. Of course, defendants conduct should not be condoned.

Honorable Michael A. Telesca

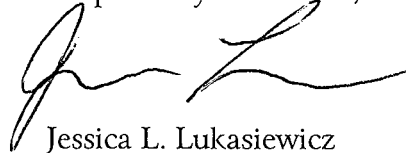
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Given defendants' failure to file any opposition papers, a point they do not dispute, and for the reasons set forth in plaintiffs' moving papers, plaintiffs respectfully request that plaintiffs' motion for conditional certification be granted.

Thank you for your courtesies in this matter. Please do not hesitate to contact our office if you have any questions or concerns.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'J. Lukasiewicz', with a stylized flourish at the end.

Jessica L. Lukasiewicz

cc: All counsel of record (via ECF)